

CHARLES DAVID BROOKS	§	
v.	§	CIVIL ACTION NO. 6:15cv992
TIM McGLASSON, ET AL.	§	

The Plaintiff Charles Brooks, an inmate of the Texas Department of Criminal Justice, Correctional Institutions Division, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Brooks was ordered to pay an initial partial filing fee of \$3.35, pursuant to 28 U.S.C. §1915(b). He responded to this order by submitting a second application for leave to proceed *in forma pauperis* which stated that a friend sent him \$15.00 per month and ten to 15 dollars periodically. He also furnished an *in forma pauperis* data sheet which showed that he had received deposits to his account in each of the six preceding months in amounts ranging from \$15.00 to \$19.44.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed for failure to prosecute or to obey an order of the Court. The Magistrate Judge determined that Brooks had shown no reason why he could not pay an initial partial filing fee of \$3.35.

In his objections, Brooks states that “knowing each cent that he gets, and the fact that he already owed the courts, plaintiff was unsure if the filing fee would be deducted from any money

he may receive, or that he had to pay direct to the court. The court did not specify, and plaintiff was unsure, so he did nothing.” He claims that he did not have the funds and states that if he had understood he was supposed to pay the money, he would have made arrangements to do so.

The order issued by the Court states as follows:

The Plaintiff is responsible for timely payment of the initial partial filing fee. If payment will be made from the Plaintiff’s inmate trust fund account, the Plaintiff shall execute all consents and other documents required of the agency having custody of the Plaintiff to authorize the necessary withdrawal from the Plaintiff’s inmate trust account.

Failure by the Plaintiff to pay the initial partial filing fee or to show that the Plaintiff has insufficient assets or means by which to pay the initial partial filing fee within 30 days may result in a dismissal of the Plaintiff’s complaint without further notice.

Brooks thus had notice that he was responsible for payment of the initial partial filing fee and that he would have to execute the forms required to accomplish withdrawal of the money from his inmate trust account. Although he claims he did not have the funds, he furnished an *in forma pauperis* data sheet which showed he received more than enough money to pay the \$3.35 initial partial filing fee in each of the preceding six months, along with an application for leave to proceed *in forma pauperis* which stated that he received \$15.00 per month from a friend as well as \$10 to \$15 periodically. Over five months have passed since the filing of Brooks’ objections, giving him more than ample time in which to pay the initial partial filing fee, but he has not done so. His objections are without merit.

The Court has conducted a careful *de novo* review of those portions of the Magistrate Judge’s proposed findings and recommendations to which the Plaintiff objected. *See* 28 U.S.C. §636(b)(1) (District Judge shall “make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which objection is made.”) Upon such *de novo* review, the Court has determined that the Report of the Magistrate Judge is correct and the Plaintiff’s objections are without merit. It is accordingly


**ORDERED** that the Plaintiff’s objections are overruled and the Report of the Magistrate Judge (docket no. 10) is **ADOPTED** as the opinion of the District Court. It is further

**ORDERED** that the above-styled civil action is **DISMISSED** without prejudice for failure to prosecute or to obey an order of the Court. It is further

**ORDERED** that any and all motions which may be pending in this action are hereby **DENIED**.

**So Ordered and Signed**

Jan 27, 2017

A handwritten signature in cursive script, appearing to read "Ron Clark", is positioned above a horizontal line.

Ron Clark, United States District Judge